

JUDGE STANTON

SCHIFF HARDIN LLP
Maxim H. Waldbaum (MW-4615)
900 Third Avenue
New York, New York 10022
Tel.: 212-753-5000
Fax: 212-753-5044

Attorneys for Plaintiff
John Hardy Limited

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN HARDY LIMITED,

Plaintiff,

Civ. No. _____

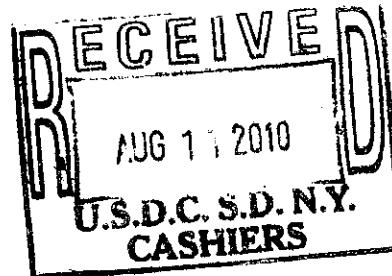
- against -

WYNN WYNN ONG,

Defendant.

COMPLAINT

JURY TRIAL DEMANDED



COMPLAINT

Plaintiff John Hardy USA Inc. ("John Hardy" or "Plaintiff"), by its attorneys, hereby demands a jury trial and alleges upon knowledge as to its own acts and upon information and belief as to all other matters, as follows:

THE PARTIES

1. Plaintiff John Hardy Limited is organized and existing under the laws of the British Virgin Islands, with a place of business located at 601 West 26th Street, New York, New York.

2. Upon information and belief, Wynn Wynn Ong ("Defendant") is an individual domiciled in the Republic of the Philippines.

NATURE OF THE ACTION

3. This is an action for trademark infringement, deceptive practices, and unfair competition under the Trademark Act of 1946, as amended (the "Lanham Act," 15 U.S.C. §§1051, et seq.), and certain related causes of action under the laws of the State of New York.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 15 U.S.C. §1121 and 28 U.S.C. §§1331, 1338(a), 1338(b) and 1367(a).

5. Venue is proper in this district pursuant to 28 U.S.C. §1391.

FACTUAL BACKGROUND

I. John Hardy

6. John Hardy is an international jewelry design firm incorporated under the laws of the British Virgin Island and based in Hong Kong, China with offices in New York, New York, Ubud, Bali, and Bangkok, Thailand, and has been selling high-end jewelry in the United States since 1989.

7. John Hardy's designs and manufactures high-end jewelry through retailers in the United States, Japan, China, Russia, France, Mexico and the United Kingdom.

8. In the United States, John Hardy jewelry is currently sold in more than 400 retail locations through national retailers such as Neiman Marcus, Saks Fifth Avenue, Bloomingdales, and Nordstrom.

9. John Hardy is the owner of various trademark registrations in the United States, including for mark "John Hardy," which is a well-known mark in the United States and internationally.

II. The Naga Collection

10. John Hardy first began selling its Naga Collection jewelry in the United States in the Fall of 2007, and has continuously used the Naga mark in connection with its Naga Collection since the Fall of 2007.

11. "Naga" means "serpent" in Indonesian as well as several other Asian languages. The Naga Collection consists of silver and gold women's and men's jewelry, with some items accented with colored gemstones and diamond pave. The jewelry pieces in the Naga Collection are unified and identified by the use of a unique, stylized scalloped design. A mythical Indonesian dragon figure is also incorporated into the design of some pieces in the collection. The Naga Collection is instantly recognizable as designed by John Hardy.

12. John Hardy's Naga Collection is currently sold in more than 400 retail locations in the United States through retailers such as Neiman Marcus, Saks Fifth Avenue, Bloomingdales, and Nordstrom. Naga Collection jewelry is also available for purchase online at www.neimanmarcus.com, www.saks.com, www.bloomingdales.com, and www.nordstrom.com.

13. Since its launch in 2007, the Naga Collection has generated tens of millions of dollars in retail sales, making it one of the most successful collections in John Hardy's history.

14. John Hardy has and continues to feature the Naga Collection in promotional material in the United States, including on billboards, in advertisements featured in national magazines, and in product catalogs circulated to customers throughout the United States. John Hardy has invested in excess of Ten Million Dollars in marketing its Naga Collection since the Fall of 2007. John Hardy's Naga Collection is also featured in product catalogs and editorials created by retail partners such as Neiman Marcus and Saks Fifth Avenue and circulated throughout the United States.

15. Since 2007, John Hardy's Naga Collection has been featured in several unsolicited magazine editorials in national magazines such as Architectural Digest, Art Asian Pacific, Conde Nast, Traveller, Elle, The Financial Times, Vanity Fair, Vogue and W.

16. John Hardy filed a trademark application for "Naga" with the United States Patent & Trademark Office in January 2010, attached hereto as Exhibit A. Upon approval, John Hardy's registration of the Naga mark for jewelry (Class 14 goods) will constitute *prima facie* evidence of the mark's validity and conclusive evidence of John Hardy's exclusive right to use the mark in connection with jewelry within the United States.

17. The Naga mark is a well-known mark used in connection with and signifying John Hardy's unique and recognizable Naga Collection, identified by its scalloped gold and silver design.

III. Defendant's Infringing Activity

18. Upon information and belief, Defendant manufactures, imports, advertises and distributes jewelry products under the name "Naga" (the "Infringing Label"), which is confusingly similar to John Hardy's Naga mark.

19. Upon information and belief, Defendant first began using the Infringing Label in commerce in the United States in early 2010. Attached as Exhibit B is a Robb Report article from March 2010 announcing the unveiling of Defendant's Naga Jewelry Collection.

20. The use of the Infringing Label has and is likely to lead to consumer confusion between John Hardy's Naga Collection and Defendant's jewelry products. Attached as Exhibit C is a page from the website of Women's Wear Daily, www.wwd.com, showing the search results for a search on "naga," which displays a picture of Defendant's Naga Jewelry alongside an advertisement for John Hardy's Naga Collection.

21. Defendant advertises and sells products using the Infringing Label in the United States in New York, San Francisco, and online at www.vivre.com. See **Exhibit D**.

22. Defendant operates a website that advertises products using the Infringing Label at the domain name www.nagajewelry.com.

23. In or about May 2010, John Hardy became aware of Defendant's infringing activities. On June 22, 2010, John Hardy's counsel sent a letter to Defendant demanding that she cease and desist from selling jewelry under the NAGA mark. See **Exhibit E**.

24. John Hardy has not received any response from Defendant.

COUNT I

(VIOLATION OF 15 U.S.C. § 1125(a) (SECTION 43(a) OF THE LANHAM ACT))

25. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 -24 of this Complaint with the same force and effect as if fully set forth herein.

26. Defendant's use of the Infringing Label in connection with its goods in interstate commerce constitutes a false designation of origin and a false or misleading description or representation of fact which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Defendant with Plaintiff and as to the origin, sponsorship, or approval of Defendant's products by Plaintiff, all within the meaning of §43(a) of the Lanham Act, 15 U.S.C. §1125(a).

27. Defendant has committed the foregoing acts with full knowledge of Plaintiff's trademark rights in the Naga trademark. Her commission of such acts with full knowledge of Plaintiff's rights constitutes willful violations under 15 U.S.C. §1114.

28. Defendant has committed the foregoing acts with an intent to cause confusion and mistake and to deceive.

29. Defendant's acts have irreparably damaged, and, unless enjoined by this Court, will continue to irreparably damage Plaintiff by causing lost sales, profits, business, reputation, goodwill and other losses, many of which are virtually impossible to calculate. An award of monetary damages alone cannot fully compensate Plaintiff for its injuries, and Plaintiff lacks an adequate remedy at law.

COUNT II

**(VIOLATION OF NEW YORK LAW PROHIBITING
DECEPTIVE ACTS AND PRACTICES)**

30. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 - 29 of this Complaint with the same force and effect as if fully set forth herein.

31. Defendant's marketing and distribution of jewelry was done intentionally and willfully to confuse consumers in order to divert sales from Plaintiff to Defendants.

32. Defendant's deceptive acts or practices in the conduct of its business, trade or commerce have the capacity to deceive the consuming public and therefore constitute unfair methods of competition and unfair and deceptive trade and business practices in violation of the New York General Business Law § 349 *et seq.*

33. Accordingly, Defendant's acts have damaged Plaintiff and the public.

COUNT III

**(VIOLATION OF NEW YORK'S COMMON AND STATUTORY UNFAIR
COMPETITION LAW)**

34. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1-33 of this Complaint with the same force and effect as if fully set forth herein.

35. Defendant's manufacture, advertising, sale and/or distribution of jewelry products under the Infringing Label is likely to cause confusion, mistake and deception in the marketplace for such products as to the source and authority for offering such products and as to

the nature and quality of such products. Potential and actual consumers are likely to believe, and likely to be deceived into believing, that the products sold by Defendant are approved, authorized and/or licensed by Plaintiff.

36. Defendants' conduct as described above constitutes unfair competition in violation of the common law of the state of New York and of Section 360 of the General Business Law of the State of New York.

PRAAYER FOR RELIEF

WHEREFORE, by the unlawful conduct of Defendants as alleged in Counts I, II, and III, Plaintiff requests that this Court:

(a) enter a preliminary and permanent injunction enjoining Defendant from: (i) continued acts of trademark infringement, deceptive practices, and unfair competition and from further violations of any of the federal and state laws cited herein; (ii) registering or maintaining any registration of the nagajewelry.com domain name, or any other names, words, designations or symbols consisting of, incorporating in whole or part, or otherwise similar to the Naga trademark or any other John Hardy trademarks; and (iii) making any description or representation stating or implying that Defendant's goods, domain names, or websites are in any way affiliated, associated, authorized, sponsored, endorsed or otherwise connected with John Hardy;

(b) order Defendant to transfer to John Hardy the registrations in the naga.com domain name and any other registrations as may be determined by the Court as appropriate herein for relief;

(c) order an accounting and disgorgement of profits derived by Defendant from acts of trademark infringement, deceptive practices, and unfair competition as set forth herein;

- (d) award damages adequate to compensate John Hardy for Defendant's acts of trademark infringement, deceptive practices, unfair competition and violations of the federal and state laws cited herein, and a proper amount of punitive and exemplary damages;
- (e) treble such damages and profits pursuant to 15 U.S.C. §1117;
- (f) assess interest upon damages so computed, including prejudgment interest;
- (g) award plaintiff its attorneys' fees, costs and expenses in this action; and
- (h) order such other relief as the Court deems necessary and proper.

Plaintiff hereby requests trial by jury on all issues so triable.

Dated: New York, New York
August 11, 2010

SCHIFF HARDIN LLP

By:


Maxim H. Waldbaum (MW-4615)
900 Third Avenue
New York, New York 10022
Tel.: (212) 753-5000
Fax: (212) 753-5044

Attorneys for Plaintiff
JOHN HARDY LIMITED

NY\50854500.1

EXHIBIT A

PTO Form 14/3 (Rev. 9/2006)
OMB No. 0651-0009 (Exp. 12/31/2011)

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 77923690

Filing Date: 01/29/2010

NOTE: Data fields with the * are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.

The table below presents the data as entered.

| Input Field | Entered |
|---------------------------------|--------------------------------------------------------------------------------------------------------|
| TEAS Plus | YES |
| MARK INFORMATION | |
| *MARK | NAGA |
| *STANDARD CHARACTERS | YES |
| USPTO-GENERATED IMAGE | YES |
| LITERAL ELEMENT | NAGA |
| *MARK STATEMENT | The mark consists of standard characters, without claim to any particular font, style, size, or color. |
| REGISTER | Principal |
| APPLICANT INFORMATION | |
| *OWNER OF MARK | John Hardy Limited |
| INTERNAL ADDRESS | 14/F Block C Sea View Estate |
| *STREET | No. 8 Watson Road |
| *CITY | North Point |
| *COUNTRY | Hong Kong |
| LEGAL ENTITY INFORMATION | |

| | |
|----------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| *TYPE | international business company |
| * STATE/COUNTRY WHERE LEGALLY ORGANIZED | British Virgin Islands |
| GOODS AND/OR SERVICES AND BASIS INFORMATION | |
| *INTERNATIONAL CLASS | 014 |
| IDENTIFICATION | Jewelry |
| *FILING BASIS | SECTION 1(a) |
| FIRST USE ANYWHERE DATE | At least as early as 09/28/2007 |
| FIRST USE IN COMMERCE DATE | At least as early as 09/28/2007 |
| SPECIMEN FILE NAME(S) | |
| ORIGINAL PDF FILE | spec-66281658-150050856_-_NAGA_14_.pdf |
| CONVERTED PDF FILE(S) (18 pages) | \\TICRS\EXPORT9\IMAGEOUT9\779\236\77923690\xml1\FTK0003.JPG \\TICRS\EXPORT9\IMAGEOUT9\779\236\77923690\xml1\FTK0004.JPG \\TICRS\EXPORT9\IMAGEOUT9\779\236\77923690\xml1\FTK0005.JPG \\TICRS\EXPORT9\IMAGEOUT9\779\236\77923690\xml1\FTK0006.JPG \\TICRS\EXPORT9\IMAGEOUT9\779\236\77923690\xml1\FTK0007.JPG \\TICRS\EXPORT9\IMAGEOUT9\779\236\77923690\xml1\FTK0008.JPG \\TICRS\EXPORT9\IMAGEOUT9\779\236\77923690\xml1\FTK0009.JPG \\TICRS\EXPORT9\IMAGEOUT9\779\236\77923690\xml1\FTK0010.JPG \\TICRS\EXPORT9\IMAGEOUT9\779\236\77923690\xml1\FTK0011.JPG \\TICRS\EXPORT9\IMAGEOUT9\779\236\77923690\xml1\FTK0012.JPG \\TICRS\EXPORT9\IMAGEOUT9\779\236\77923690\xml1\FTK0013.JPG \\TICRS\EXPORT9\IMAGEOUT9\779\236\77923690\xml1\FTK0014.JPG \\TICRS\EXPORT9\IMAGEOUT9\779\236\77923690\xml1\FTK0015.JPG \\TICRS\EXPORT9\IMAGEOUT9\779\236\77923690\xml1\FTK0016.JPG \\TICRS\EXPORT9\IMAGEOUT9\779\236\77923690\xml1\FTK0017.JPG |

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| | \TICRS\EXPORT9\IMAGEOUT9\779\236\77923690\xml1\FTK0020.JPG |
| SPECIMEN DESCRIPTION | Point of sale catalogue |
| ADDITIONAL STATEMENTS INFORMATION | |
| *TRANSLATION (if applicable) | |
| * TRANSLITERATION (if applicable) | |
| *CLAIMED PRIOR REGISTRATION (if applicable) | |
| *CONSENT (NAME/LIKENESS) (if applicable) | |
| *CONCURRENT USE CLAIM (if applicable) | |
| ATTORNEY INFORMATION | |
| NAME | Adam S. Weiss |
| ATTORNEY DOCKET NUMBER | 31583 |
| FIRM NAME | Schiff Hardin LLP |
| STREET | P.O. Box 06079 |
| CITY | Chicago |
| STATE | Illinois |
| COUNTRY | United States |
| ZIP/POSTAL CODE | 60606-0079 |
| PHONE | 312-258-5631 |
| FAX | 312-258-5600 |
| EMAIL ADDRESS | trademarks@schiffhardin.com |
| AUTHORIZED TO COMMUNICATE | Yes |

| | |
|---------------------------------------------------|---------------------------------------------------------------------------------------------|
| VIA EMAIL | |
| OTHER APPOINTED ATTORNEY | Clay A. Tillack, Thomas P. White, John D. Simpson, Chris L. Bollinger, and Amy Cohen Heller |
| CORRESPONDENCE INFORMATION | |
| * NAME | Adam S. Weiss |
| FIRM NAME | Schiff Hardin LLP |
| * STREET | P.O. Box 06079 |
| * CITY | Chicago |
| * STATE (Required for U.S. applicants) | Illinois |
| * COUNTRY | United States |
| * ZIP/POSTAL CODE | 60606-0079 |
| PHONE | 312-258-5631 |
| FAX | 312-258-5600 |
| * EMAIL ADDRESS | trademarks@schiffhardin.com |
| * AUTHORIZED TO COMMUNICATE VIA EMAIL | Yes |
| FEES INFORMATION | |
| NUMBER OF CLASSES | 1 |
| FEES PER CLASS | 275 |
| *TOTAL FEES PAID | 275 |
| SIGNATURE INFORMATION | |
| * SIGNATURE | /Damien Dernoncourt/ |
| * SIGNATORY'S NAME | Damien Dernoncourt |
| * SIGNATORY'S POSITION | Manager |
| * DATE SIGNED | 01/29/2010 |

EXHIBIT B

8/2/2010

A Gilded Vision of Nature | Robb Report



Robb Report *The Global Luxury Source*

March 08, 2010

A Gilded Vision of Nature



Click image to enlarge.

Philippine designer Wynn Wynn Ong, known for her elaborate one-of-a-kind jewelry, has unveiled her collection at the Asia Society on Park Avenue in New York. The **Naga Jewelry** collection features imaginative handmade gold and gemstone jewelry referencing nature in literal concepts. The new **All Bark** group, for instance, is composed of 12 large-scale cuffs textured to replicate tree bark, each capturing a moment in nature including accents such as a crawling spider, a colorful frog, or an intricate gold spiderweb. Brooches feature animal feathers, and rings include coral and pearls. The former teacher turned her jewelry-making hobby into a business nearly a decade ago and sold most of her jewelry through word-of-mouth to Philippine society women. Ong is now venturing beyond her country into Europe and America. Prices start at \$2,000. (www.nagajewelry.com)

—Jill Newman


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JEWELRY

Golden Heirlooms

Jeweler Kim Kaufman creates elaborate gold lockets and pendants that reference ancient symbols and sacred geometry to create jewelry that ... >>

JEWELRY

A Sparkling Innovation

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A brand name strongly associated with tradition, De Beers (888.376.9230, www.debeers.com) chose this year to ... More

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Christian Navaro of Wally's



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TODAY THIS WEEK THIS MONTH PAST 12 MONTHS ALL YEARS YEAR SPAN: 1994 ▾ TO 2010 ▾ SU

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EXHIBIT D

NAGA JEWELRY - Windows Internet Explorer

nagajewelry.com

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Favorites NAGA JEWELRY

MANILA NEW YORK SAN FRANCISCO

NAGA JEWELRY

DESIGN BY WYNN WYNN ONG

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Available At:

| | |
|---------------|-----------------------------------------------------------------------------------------------|
| MANILA | FIRMA Greenbelt 3, Makati AC + 632 Greenbelt 5, Makati FELICITY Shangri-La, Mandaluyong |
| NEW YORK | ASIA SOCIETY AND MUSEUM 725 Park Avenue New York, NY 10021 |
| SAN FRANCISCO | ANAMAR GALLERY 720 York Street #113 San Francisco, CA 94110 |
| WWW | www.vivre.com |

Contact:

E : info@nagajewelry.com
W : www.nagajewelry.com

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Error on page. Internet 100% □

Search Windows Internet Explorer

vivre.com

VIE RE TIME: 02:17PM - AUGUST 02, 2010 MY SHOPPING BAG 0

EVA'S NOTES | SHOP | SALE

MY ACCOUNT | AS SEEN IN | SHOPPING BAG LOG OUT | Search keywords... Go!

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Your search for "naga jewelry" found 36 available items.

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- [NAGA JEWELRY SELECTION](#)
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- [JEWELRY](#)
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- [ALL](#)
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BY PRICES

- [\\$0-\\$100](#)
- [\\$101-\\$200](#)
- [\\$201-\\$300](#)

CRIBELLUM CUFF
by NAGA Jewelry.
\$3,000.00

RUTILATED QUARTZ STAGHORN CUFF
by NAGA Jewelry.
\$3,800.00

CITRINE AND GOLD SILK WEB NECKLACE
by NAGA Jewelry.
\$1,250.00

JEWELLED VERMEIL CORAL POLYP RING
by NAGA Jewelry.
\$1,850.00

BABY PINK CLAM SHELL RING
by NAGA Jewelry.
\$1,750.00

BIRD OF PARADISE EARRINGS
by NAGA Jewelry.
\$1,650.00

BRASS JEWELLED SPIDER CUFF
by NAGA Jewelry.
\$2,600.00

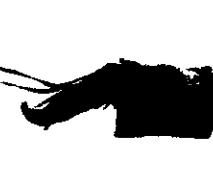
   

BY-PASS CUFF
by NAGA Jewelry.
\$1,000.00

NYMPHALIS CUFF
by NAGA Jewelry.
\$2,900.00

JEWELLED VERMEIL SPIKE RING
by NAGA Jewelry.
\$2,100.00

JEWELLED MILIOLA BROOCH
by NAGA Jewelry.
\$3,900.00

VERMEIL CORAL EXOSKELETON CUFF
by NAGA Jewelry.
\$950.00

ENTRÉE PARADISAEA MINOR CUFF
by NAGA Jewelry.
\$3,100.00

MULTI-STONE THALAMORPHA NECKLACE
by NAGA Jewelry.
\$3,650.00

JEWELLED WEEVIL CUFF
by NAGA Jewelry.
\$2,450.00

MARCELLO FEJERVARYA CUFF
by NAGA Jewelry.
\$3,000.00

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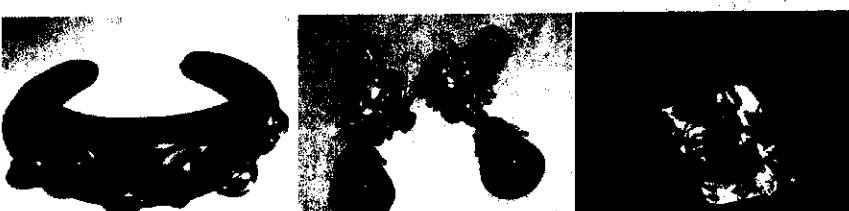
Wynn Wynn Ong Jewelry

[Designers](#) > [Jewelry](#) > Wynn Wynn Ong Jewelry

Each piece is designed with specific stones in mind and crafted entirely by hand. Thus, no 2 pieces are alike. A variety of techniques including hammering, stamping, chasing, reticulation and repoussé on precious metals are used to create backdrops to the gems. Stones vary from the known to the rare and obscure. Their single common bond is their personality and the possible stories they tell.

[More about Wynn Wynn Ong](#)

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EXHIBIT E



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June 22, 2010

VIA FEDERAL EXPRESS

Ms. Wynn Wynn Ong
c/o Vivre
11 East 26th Street, 16th Floor
New York, NY 10010-1421

Re: JOHN HARDY NAGA JEWELRY COLLECTION and Use of the Naga Name in the United States by You

Dear Ms. Ong:

As trial counsel for John Hardy, this letter is notice to inform you that we have recently come across your 2010 entrance into the United States market with jewelry under the name NAGA. We believe you have done so either in ignorance or with intentional harm to our rights. We will presume the former.

John Hardy has designed for and is selling in the United States market since 2007 with sales of over \$40 million in NAGA brand jewelry. A trademark application has been on file since January 2009 and is expected to be published soon (only limited sample clarification is needed). The NAGA Collection of John Hardy is obviously a very important part of the world famous John Hardy branded collection sets. Such NAGA jewelry has received wide scale promotion and advertising in the United States since 2007. You probably know us as one of the top individual designers and design companies selling in the United States at all the major retailing facilities in all major cities and in over 400 retail locations.

As you have worked primarily in the Philippines and perhaps other cities in Asia and have had minimal use of your NAGA jewelry anywhere else before just recently, we wanted to bring the above to your attention. As stated above we assume for purposes of this correspondence that you had any knowledge of the famous United States usage of John Hardy's NAGA brand for jewelry collections (although being in the business it is quite unusual to accept this notion). For your information I am enclosing some of the 2008 catalog information sheets of John Hardy as well as the trademark application showing first use in the United States.

We require you to remark or rename your NAGA jewelry for the United States. We also have substantial use of the NAGA brand for John Hardy in many countries outside the United States. This letter is to let you know that you should cease such activity (as it will limit any further damage to any business of John Hardy or proposed by you). Your advertising and promotion in March 2010 appears to be a grand entrance into an area already covered by John Hardy.

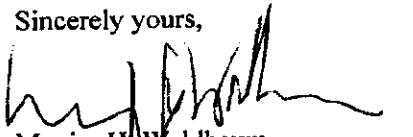


Ms. Wynn Wynn Ong
June 22, 2010
Page 2

When you have had an opportunity to speak to your counsel about this matter please have that counsel call me immediately. Unless we hear from you by Friday, July 2, we will have no choice but to prevent your further confusing use of NAGA in the United States for jewelry. While we have assumed during this correspondence that you have done this innocently based on some work that might have been performed in the Philippines, because of our commitment to the NAGA brand, a major part of the John Hardy success story, we cannot allow this potential for confusion to begin. As you now know our position and our story, this will be the first and last notice you will receive from us prior to the expiration date above.

Please feel free to contact me to try to work this out.

Sincerely yours,



Maxim H. Waldbaum
Schiff Hardin LLP
Attorneys for John Hardy Limited

Enclosures

CH2\8710453.1